

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Application of:

Confirmation Number: 8269

John R. Sloop

Group Art Unit: 1615

Serial No.: 10/625,146

Examiner: Neil S. Levy

Filed: July 23, 2003

Docket No.: 141901-1010

For: Wild Animal Control Apparatus And Method

**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

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Sir:

This Appeal Brief under 37 C.F.R. § 41.37 is submitted in support of the Notice of Appeal filed January 28, 2009, responding to the Office Action mailed October 31, 2008.

It is not believed that extensions of time or fees are required to consider this Appeal Brief. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. §1.136(a), and any fees required are hereby authorized to be charged to Deposit Account No. 20-0778

### **I. Real Party in Interest**

The real party in interest John Sloop of 3603 Pebblecreek Lane, Dothan Alabama. 36303.

### **II. Related Appeals and Interferences**

There are no known related appeals or interferences that will affect or be affected by a decision in this Appeal.

### **III. Status of Claims**

Claims 1 and 27 – 28 stand finally rejected. No claims have been allowed. Claims 9 – 21 have been canceled. Claims 2 – 8 and 22 – 26 have been withdrawn. The final rejections of claims 1 and 27 – 28 are appealed.

### **IV. Status of Amendments**

No amendments have been made or requested since the mailing of the Final Office Action and all amendments submitted prior to the Final Office action have been entered. The claims in the attached Claims Appendix (see below) reflect the present state of the claims.

### **V. Summary of Claimed Subject Matter**

The claimed subject matter is summarized below with reference numerals and references to the written description ("specification") and drawings. The subject matter described in the following appears in the original disclosure at least where indicated, and may further appear in other places within the original disclosure.

Embodiments according to independent claim 1 describe a wild animal control apparatus (FIG. 4, element 20 and page 5, line 5), comprising: an attractant adapted to

entice a target wild animal to consume the wild animal control apparatus (FIG. 4, element 30 and page 5, line 20); a trigger covered by a portion of the attractant (FIG. 4, element 34 and page 6, line 9), the trigger adapted to dissolve in an environment having a predetermined pH (FIG. 4, element 34 and page 6, line 9); and a subduing agent (FIG. 4, element 36 and page 8, line 4) coupled to the trigger, the subduing agent adapted to subdue the wild animal that consumes the wild animal control apparatus once fluids in the digestive system of the wild animal having the predetermined pH cause the trigger to dissolve, wherein the subduing agent is activated and the wild animal is subdued (FIG. 4, element 36 and page 8, line 4).

Embodiments according to claim 27 describe a wild animal control apparatus (FIG. 8, element 100 and page 12, line 12), comprising: meat, utilized to attract a wild animal (FIG. 4, element 30 and page 6, line 14); an energy release device, surrounded by the meat (FIG. 8, element 102 and page 12, line 12), the energy release device utilized such that when the wild animal consumes the meat, the wild animal also consumes the energy release device (page 7, line 16); and a trigger device that contains the energy release device (FIG. 4, element 34 and page 7, line 9), the trigger device utilized such that when the wild animal consumes the meat and energy release device (page 7, line 16), stomach acids of the wild animal that are in the range of 0.5 – 2.5 pH chemically react with the trigger device to dissolve the trigger device (FIG. 4 and page 7, line 11), wherein upon dissolving the trigger device, the energy release device releases energy within the wild animal to subdue the wild animal (FIG. 4 and FIG. 8 and page 7, line 17).

#### **VI. Grounds of Rejection to be Reviewed on Appeal**

The following grounds of rejections are to be reviewed on appeal:

Claims 1 and 27 – 28 stand rejected under 35 U.S.C. §112, first paragraph for allegedly failing to comply with the written description requirement.

Claims 1 and 27 – 28 also stand rejected under 35 U.S.C. §112, second paragraph for allegedly being indefinite for failing to particularly point and distinctly claim the subject matter which Appellant regards as the invention.

Claims 1 and 27 – 28 are rejected under 35 U.S.C. §102(b) or in the alternative under 35 U.S.C. §103(a) over U.S. Patent Number 5,674,518 ("*Fajit*").

## **VII. Arguments**

Appellant respectfully submits that claims 1 and 27 – 28 are allowable under 35 U.S.C. §112. Appellant additionally submits that claims 1 and 27 – 28 are allowable under 35 U.S.C. §102(b) and 35 U.S.C. §103(a) over U.S. Patent Number 5,674,518 ("*Fajit*"). Appellant respectfully requests that the Board of Patent Appeals overturn the final rejection of those claims at least for the reasons discussed below.

### **A. Claims 1 and 27 – 28 Meet the Requirements of 35 U.S.C. §112**

The Final Office Action argues that claims 1 and 27 – 28 are rejected for using the term "adapted." The Final Office Action argues that this term is not found in the specification and is thus not supported. Appellant disagrees with this rejection. It has been clearly established that under 35 U.S.C. §112, the present application need not include a verbatim recitation of the written description in the claims (see MPEP 2163, which states "if a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met"). Claims 1 and 27 – 28 originally recited "configured" but were amended to

"adapted" in an attempt to appease the examiner. Appellant submits that as one of ordinary skill in the art would unquestionably deem the term "adapted" equivalent to the term "configured" and would additionally understand the present application to possess the claimed subject matter (which includes "adapted"), this rejection is improper.

Additionally, the Final Office Action argues that there is still no explanation of how any attractant is adapted (modified, altered, arranged?) (OA page 2, line 11). Additionally, the Office Action argues "it is unclear how the (1) attractant is 'configured', and how different figures would entice different animals" (OA page 2, line 18). Appellant submits that the phrase "configured to" is a standard phrase used in hundreds of patents each year to convey a function of that element. As one of ordinary skill in the art would unquestionably understand, the claim element "an attractant adapted to entice" is equivalent to a claim element that recites "an attractant that entices." Appellant additionally submits that when reading the claims in view of the written description, one of ordinary skill would understand that claims 1 and 27 – 28 are directed to embodiments where the attractant includes, for example "meat or sugar that draws the target wild animal to the subduing device," (see page 5, line 20). For at least this reason, use of the term "adapted" or "configured" is unquestionably proper and clearly fulfills all the requirements of 35 U.S.C. §112.

Further, the Final Office Action argues "[i]t is unclear how the trigger is 'configured', and how different figures would entice different animals" (OA page 2, line 18). First, Appellant assumes that this argument includes an error because the "trigger" is not configured to "entice different animals." Second, in viewing the rejection as an argument regarding a "trigger adapted to dissolve," Appellant submits that, as clearly recited in the claims and supported by the specification, a "trigger adapted to dissolve" includes a trigger that is made of a metal that reacts to solutions with a predetermined

pH level (page 7, line 9) and thus "is then dissolved by fluids within the stomach" (page 9, line 7).

Similarly, the Final Office Action argues "it is unclear how the attractant is configured to dissolve and how a pH is predetermined" (OA page 2, line 19). Again, the argument of the Final Office Action is improper. First, as the attractant includes, for example, "meat or sugar that draws the target wild animal to the subduing device," (see page 5, line 20), the attractant will inherently dissolve in a predetermined pH (*e.g.*, stomach acid of a coyote or other target animal). Second, since the Final Office Action argues "it is unclear how the attractant is configured to dissolve and how a pH is predetermined" (*id.*), the Office Action illustrates an understanding of the clear and plain meaning of the term "configured." Thus, because claims 1 and 27 – 28 do not recite "attractant configured to dissolve," it appears that the Office Action is unnecessarily delaying prosecution of the present application. Third, claims 1 and 27 – 28 do not recite that a "pH is predetermined." Instead, claim 1 recites that the digestive system of the target animal has a predetermined pH. As is clearly evident to one of ordinary skill in the art, the pH of the digestive systems of animals have been determined in the past and would thus be "predetermined." Consequently, it would not be unclear for claims 1 and 27 – 28 to recite that the digestive system of the target animal has a predetermined pH.

Additionally, the Office Action argues that "it is unclear how the subduing agent is coupled to [the] trigger" (OA page 2, line 20). Again, as understood by one of ordinary skill in the art, because the attractant may include meat or sugar, the attractant may be wrapped around the trigger and/or naturally adhere to the surface of the trigger. Consequently, the phrase "coupled to" does not render any of claims 1 and 27 – 28 indefinite. The Final Office Action continues, arguing "it is unclear how to subdue them" (OA page 3, line 1). In response, Appellant submits that the arguments in the Final Office Action (and in particular this argument) appear to be presented to merely to delay

prosecution of the present application. Upon reading the written description of the present application, one of ordinary skill in the art would unquestionably understand that the target animal can be subdued via ignition of a bullet, via an explosion, via expansion of a sponge in the digestive system, *etc.* Multiple examples of subduing the target animal are clearly disclosed in the written description.

The Final Office Action additionally argues that "the specification identifies 'limited' subduing agents; metal or percussion or chemical reactants, not further defined or identified, or sponges, stated to result in energy release, but not explained as to how this leads to death" (OA page 3, line 9). Appellant submits that one of ordinary skill in the art would understand the consequence of an explosion occurring within the digestive track of a target animal. Similarly, ingesting a chemical reactant would unquestionably result in incapacitation or death of the target animal. It is similarly evident as to how the other embodiments would result in the target animal being subdued.

The Final Office Action further argues that "protective materials are undefined or exemplified, except as mineral oil" (OA page 3, line 11). Appellant submits that the term "protective materials" do not appear in any pending claim. Thus, this argument is irrelevant.

The Final Office Action additionally argues "[t]here is no description of specific elements of an apparatus with any form or amount of attractant, elected as meat, in or on an apparatus with any specific form or material in any particular amount that would dissolve in the elected pH with any specific subduing agent and amount thereof, except for the non-elected exploding components" (OA page 4, line 1). First, as indicated in the response filed October 18, 2007, the "elected embodiments" were made to reduce the "searching burden" on the examiner and not to limit the scope of the pending claims. Second, even in claim 27, where an energy release embodiment is recited, an exploding component would also

be included in an energy release embodiment. Regardless, one of ordinary skill in the art would understand these quantities without undue experimentation.

For at least the reasons set forth above, Appellant submits that the rejections presented in the Final Office Action are improper. Appellant respectfully requests these rejections be overturned and that claims 1 and 27 – 28 be found allowable.

**B. Rejections Under 35 U.S.C. §102(b) and 103(a)**

**1. Claim 1 is Allowable**

The Final Office Action indicates that claim 1 stands rejected under 35 U.S.C. §102(b) and 35 U.S.C. §103(a) as allegedly being anticipated by U.S. Patent Number 5,674,518 ("*Fajit*"). Appellant respectfully traverses this rejection on the grounds that *Fajit* does not disclose, teach, or suggest all of the claimed elements. More specifically, claim 1 recites:

A wild animal control apparatus, comprising:  
an attractant adapted to entice a target wild animal to consume the wild animal control apparatus;  
***a trigger covered by a portion of the attractant, the trigger adapted to dissolve in an environment having a predetermined pH; and***  
a subduing agent coupled to the trigger, the subduing agent adapted to subdue the wild animal that consumes the wild animal control apparatus ***once fluids in the digestive system of the wild animal having the predetermined pH cause the trigger to dissolve, wherein the subduing agent is activated and the wild animal is subdued.***  
***(Emphasis added)***

Appellant respectfully submits that claim 1 is allowable for at least the reason that *Fajit* fails to disclose, teach, or suggest a "wild animal control apparatus, comprising... ***a trigger covered by a portion of the attractant, the trigger adapted to dissolve in an environment having a predetermined pH...*** [and] a subduing agent coupled to the trigger, the subduing agent adapted to subdue the wild animal that consumes the wild



animal control apparatus ***once fluids in the digestive system of the wild animal having the predetermined pH cause the trigger to dissolve, wherein the subduing agent is activated and the wild animal is subdued*** as recited in claim 1. First, *Fajt* discloses "[t]his invention concerns an improvement in the control of fish populations by taking advantage of the feeding habits of undesirable species of fish to selectively poison them" (emphasis added; column 1, line 10). Second, *Fajt* discloses "the killing effectiveness of rotenone is greatly increased when combined with a synergist and an adsorption agent or agents" (column 3, line 42). As illustrated in this passage and elsewhere, *Fajt* discloses embodiments where a poison is combined with food and a chemical that "neutraliz[es] the digestive acids of the target fish" (column 3, line 57). In operation, the chemical breaks down the digestive system of the fish so that the poison is more effective. This however, is different than claim 1, for at least the reason that *Fajt* fails to even suggest "***a trigger covered by a portion of the attractant, the trigger adapted to dissolve in an environment having a predetermined pH***" as recited in claim 1. More specifically, if the chemical in *Fajt* is utilized, the fluids in the digestive system of the wild animal would be unable to dissolve anything. Consequently, *Fajt* cannot anticipate or render obvious claim 1. For at least this reason, claim 1 is allowable.

## **2. Claim 27 is Allowable**

The Final Office Action indicates that claim 27 stands rejected under 35 U.S.C. §102(b) and 35 U.S.C. §103(a) as allegedly being anticipated by U.S. Patent Number 5,674,518 ("*Fajit*"). Appellant respectfully traverses this rejection on the grounds that *Fajt* does not disclose, teach, or suggest all of the claimed elements. More specifically, claim 27 recites:

A wild animal control apparatus, comprising:

meat, utilized to attract a wild animal;  
an energy release device, surrounded by the meat,  
the energy release device utilized such that when the wild  
animal consumes the meat, the wild animal also consumes  
the energy release device; and

***a trigger device that contains the energy  
release device, the trigger device utilized such that  
when the wild animal consumes the meat and energy  
release device, stomach acids of the wild animal that are  
in the range of 0.5 – 2.5 pH chemically react with the  
trigger device to dissolve the trigger device, wherein upon  
dissolving the trigger device, the energy release  
device releases energy within the wild animal to  
subdue the wild animal.***

***(Emphasis added)***

Appellant respectfully submits that claim 27 is allowable for at least the reason that *Fajt* fails to disclose, teach, or suggest a “wild animal control apparatus, comprising... ***a trigger device that contains the energy release device, the trigger device utilized such that when the wild animal consumes the meat and energy release device,*** stomach acids of the wild animal that are in the range of 0.5 – 2.5 pH chemically react with the trigger device to dissolve the trigger device, ***wherein upon dissolving the trigger device, the energy release device releases energy within the wild animal to subdue the wild animal***” as recited in claim 27. First, *Fajt* discloses “[t]his invention concerns an improvement in the control of fish populations by taking advantage of the feeding habits of undesirable species of fish to selectively poison them” (emphasis added; column 1, line 10). Second, *Fajt* discloses “the killing effectiveness of rotenone is greatly increased when combined with a synergist and an adsorption agent or agents” (column 3, line 42). As illustrated in this passage and elsewhere, *Fajt* discloses embodiments where a poison is combined with food and a chemical that “neutraliz[es] the digestive acids of the target fish” (column 3, line 57). In operation, the chemical breaks down the digestive system of the fish so that the poison is more effective. This however, is different than claim 27, for at least the reason that *Fajt* fails to even suggest ***“a trigger device that contains the energy release device, the trigger***

*device utilized such that when the wild animal consumes the meat and energy release device*" as recited in claim 27. More specifically, if the chemical in *Fajt* is utilized, the fluids in the digestive system of the wild animal would be unable to dissolve anything. Consequently, *Fajt* cannot anticipate or render obvious claim 27.

Further, despite the Final Office Action argument, there is no evidence that the range of 0.5 – 2.5 pH is even suggested in *Fajt*. Similarly, as death by poison as disclosed in *Fajt*, is different than subduing via energy release, *Fajt* fails to anticipate or render obvious claim 27. For at least these reasons, claim 27 is allowable.

### **3. Claim 28 is Allowable**

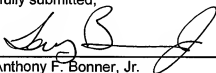
Claim 28 is allowable as a matter of law for at least the reason that this claim depends from allowable independent claim 27.

### **VIII. Conclusion**

In summary, it is Appellant's position that Appellant's claims are patentable over the applied cited art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully request that the Board of Appeals overturn the Examiner's rejection and allow Appellant's pending claims.

Respectfully submitted,

By:

  
\_\_\_\_\_  
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**Claims Appendix under 37 C.F.R. § 41.37(c)(1)(viii)**

The following are the claims that are involved in this Appeal.

1. A wild animal control apparatus, comprising:

an attractant adapted to entice a target wild animal to consume the wild animal control apparatus;

a trigger covered by a portion of the attractant, the trigger adapted to dissolve in an environment having a predetermined pH; and

a subduing agent coupled to the trigger, the subduing agent adapted to subdue the wild animal that consumes the wild animal control apparatus once fluids in the digestive system of the wild animal having the predetermined pH cause the trigger to dissolve, wherein the subduing agent is activated and the wild animal is subdued.

27. A wild animal control apparatus, comprising:

meat, utilized to attract a wild animal;

an energy release device, surrounded by the meat, the energy release device utilized such that when the wild animal consumes the meat, the wild animal also consumes the energy release device; and

a trigger device that contains the energy release device, the trigger device utilized such that when the wild animal consumes the meat and energy release device, stomach acids of the wild animal that are in the range of 0.5 – 2.5 pH chemically react with the trigger device to dissolve the trigger device, wherein upon dissolving the trigger device, the energy release device releases energy within the wild animal to subdue the wild animal.

28. The wild animal control apparatus of claim 27, wherein the energy release device subdues the wild animal without poisoning the wild animal.

**Evidence Appendix under 37 C.F.R. § 41.37(c)(1)(ix)**

(None)

**Related Proceedings Appendix under 37 C.F.R. § 41.37(c)(1)(x)**

(None)